

FEDERAL RESERVE SYSTEM

12 CFR Part 202

Regulation B; Docket No. R-1426

RIN No. 7100 AD 78

Regulation B; Equal Credit Opportunity

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule; request for public comment.

SUMMARY: The Board is publishing for public comment a proposed rule amending Regulation B (Equal Credit Opportunity). Section 704B of the Equal Credit Opportunity Act (ECOA), as added by Section 1071 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act or Act), requires that financial institutions collect and report information concerning credit applications made by women- or minority-owned businesses and by small businesses. ECOA Section 704B becomes effective on the date that rulemaking authority for ECOA is transferred to the Consumer Financial Protection Bureau (CFPB), which is July 21, 2011. Although the CFPB will have the authority to issue rules to implement ECOA Section 704B for most entities, the Board retains authority to issue rules for certain motor vehicle dealers. This proposed rule excepts motor vehicle dealers that are subject to the Board's jurisdiction from the requirements of ECOA Section 704B temporarily, until the effective date of final rules that will be issued by the Board to implement that provision.

DATES: Comments on this proposed rule must be received on or before July 29, 2011.

ADDRESSES: You may submit comments, identified by Docket No. R- 1426 and RIN No. 7100 AD 78, by any of the following methods:

- Agency Web Site: <http://www.federalreserve.gov>. Follow the instructions for submitting comments at <http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm>.
- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- E-mail: regs.comments@federalreserve.gov. Include the docket number in the subject line of the message.
- Fax: (202) 452-3819 or (202) 452-3102.
- Mail: Address to Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, DC 20551.

All public comments will be made available on the Board's web site at <http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm> as submitted, unless modified for technical reasons. Accordingly, comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room MP-500 of the Board's Martin Building (20th and C Streets, N.W.) between 9:00 a.m. and 5:00 p.m. on weekdays.

FOR FURTHER INFORMATION CONTACT: Lorna Neill or Nikita Pastor, Senior Attorneys, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, DC 20551, at (202) 452-2412 or (202) 452-3667. For users of Telecommunications Device for the Deaf (TDD) only, contact (202) 263-4869.

SUPPLEMENTARY INFORMATION:

I. Background

Section 704B of the Equal Credit Opportunity Act (ECOA), as added by Section 1071 of the Dodd-Frank Wall Street Reform and Consumer Protection Act¹ (Dodd-Frank Act or Act), requires that financial institutions collect and report information concerning credit applications made by women- or minority-owned businesses and by small businesses. 15 U.S.C. 1691c-2. The statute directs financial institutions to compile and maintain the data “in accordance with regulations of the Bureau.” ECOA Section 704B(e)(1), 15 U.S.C. 1691c-2(e)(1). The purpose of Section 704B is “to facilitate enforcement of fair lending laws and enable communities, governmental entities, and creditors to identify business and community development needs and opportunities of women-owned, minority-owned, and small businesses.” ECOA Section 704B becomes effective on the date that rulemaking authority for ECOA is generally transferred to the Consumer Financial Protection Bureau (CFPB), which is July 21, 2011.

On April 11, 2011, the CFPB issued a letter concluding that financial institutions have no obligations under Section 704B until the CFPB issues regulations to implement the requirements. The CFPB letter notes that Congress intended Section 704B to produce reliable and consistent data that can be analyzed by the CFPB, other government agencies, and members of the public to facilitate enforcement of fair lending laws and to identify business and community development needs. Based on the statutory text, purpose, and legislative history, the CFPB letter concluded that implementing regulations are necessary to ensure that data are collected and reported in a consistent, standardized fashion that allows for sound analysis by the CFPB and other users of data.

¹ Pub. L. No. 111-203, 124 Stat. 1376 (2010).

Although the CFPB will have authority to issue rules to implement ECOA Section 704B for most entities, the Board retains authority to issue rules for motor vehicle dealers covered by Section 1029(a) of the Act.² 12 U.S.C. 5519. Thus, the Board is responsible for issuing regulations to implement the amendments made by Section 704B for motor vehicle dealers covered by Section 1029(a) of the Dodd-Frank Act. Consequently, the Board has received inquiries as to whether motor vehicle dealers will need to comply with the requirements of ECOA Section 704B before implementing regulations are issued.

The Board believes that detailed rules to implement ECOA Section 704B are necessary to ensure that data collected and reported under that provision are useful. The purposes of the statute are to facilitate fair lending enforcement and to identify business and community development needs and opportunities of women-owned, minority-owned, and small businesses. To support sound analysis by users of the data, it should be collected and reported in a consistent and standardized way. To achieve this, implementing rules can provide motor vehicle dealers with uniform definitions and standards that they can follow in collecting and reporting data.

Accordingly, this proposed rule excepts motor vehicle dealers covered by Section 1029(a) of the Dodd-Frank Act from any obligation to comply with ECOA Section 704B

² Section 1029(a) of the Dodd-Frank Act states: “Except as permitted in subsection (b), the Bureau may not exercise any rulemaking . . . authority . . . over a motor vehicle dealer that is predominantly engaged in the sale and servicing of motor vehicles, the leasing and servicing of motor vehicles, or both.” 12 U.S.C. 5519(a). Section 1029(b) of the Dodd-Frank Act states: “Subsection (a) shall not apply to any person, to the extent such person (1) provides consumers with any services related to residential or commercial mortgages or self-financing transaction involving real property; (2) operates a line of business (A) that involves the extension of retail credit or retail leases involving motor vehicles; and (B) in which (i) the extension of retail credit or retail leases are provided directly to consumers and (ii) the contract governing such extension of retail credit or retail leases is not routinely assigned to an unaffiliated third party finance or leasing source; or (3) offers or provides a consumer financial product or service not involving or related to the sale, financing, leasing, rental, repair, refurbishment, maintenance, or other servicing of motor vehicles, motor vehicle parts, or any related or ancillary product or service.” 12 U.S.C. 5519(b).

until the Board issues final regulations to implement that provision and those regulations become effective. This proposed rule is consistent with the views expressed by the CFPB, and is supported by the text and purpose of Section 1071 of the Dodd-Frank Act. The applicability of this proposed rule is limited to Section 1071 and does not affect the implementation date of any other provision of the Dodd-Frank Act.

II. Legal Authority

ECOA Section 703, as amended by Section 1085 of the Dodd-Frank Act, directs the Board to prescribe regulations to carry out ECOA's purposes for motor vehicle dealers covered by Section 1029(a) of the Dodd-Frank Act. 15 U.S.C. 1691b(f). In addition, ECOA Section 703 authorizes the Board to issue regulations that contain such classifications, differentiation, or other provisions, or that provide for such adjustments and exceptions for any class of transactions, as in the judgment of the Board are necessary or proper to effectuate the purposes of ECOA, to prevent circumvention or evasion of ECOA, or to facilitate or substantiate compliance with ECOA. *Id.* Finally, ECOA Section 704B(g)(2) contains authority for exceptions or exemptions for any class of financial institutions as deemed necessary or appropriate to carry out the purposes of this section. 15 U.S.C. 1691c-2(g)(2).

Pursuant to this authority, the proposed rule excepts motor vehicle dealers covered by Section 1029(a) of the Dodd-Frank Act temporarily from the requirement to comply with ECOA Section 704B, until the effective date of final rules that will be issued by the Board to implement Section 704B. The Board believes that this exception is necessary to effectuate the purposes of ECOA and facilitate compliance. First, ECOA Section 704B states that the purpose is "to facilitate enforcement of fair lending laws and

enable communities, governmental entities, and creditors to identify business and community development needs and opportunities of women-owned, minority-owned, and small businesses.” 15 U.S.C. 1691c-2(a). The Board believes that this purpose is better served if there are detailed rules that prescribe the method for collecting and reporting of data under Section 704B. The collection of data in a uniform manner under such rules will enhance data analysis and enforcement capabilities. In addition, the text of ECOA Section 704B contemplates that regulations are necessary to implement this provision by directing that financial institutions compile and maintain the data “in accordance with regulations of the Bureau.”³ Finally, implementing regulations will facilitate compliance by providing guidance on how motor vehicle dealers can comply with the statutory requirements in a manner that effectuates the legislative purposes.

III. Section-by-Section Analysis

Section 202.17 Data Collection for Credit Applications by Women-Owned, Minority-Owned, or Small Businesses

17(a) Effective Date for Motor Vehicle Dealers

Section 704B of ECOA, as added by Section 1071 of the Dodd-Frank Act, requires that financial institutions collect and report information concerning credit applications made by women- or minority-owned businesses and by small businesses. 15 U.S.C. 1691c-2. The term “financial institution” includes any entity that engages in any financial activity. 15 U.S.C. 1691c-2(h)(1). Although the term “financial activity” is not defined in ECOA or the Dodd-Frank Act, motor vehicle dealers covered by Section

³ See ECOA Section 704B(e)(1), 15 U.S.C. 1691c-2(e)(1) (“Each financial institution shall compile and maintain, in accordance with regulations of the Bureau, a record of the information provided by any loan applicant”); ECOA Section 704B(b), 15 U.S.C. 1691c-2(b) (“Subject to the requirements of this section . . . the financial institution shall . . . maintain a record of the responses”).

1029(a) of the Dodd-Frank Act may be financial institutions subject to the requirements of ECOA Section 704B. This section of ECOA becomes effective on the designated transfer date, which is July 21, 2011.

The proposed rule provides that no motor vehicle dealer covered by Section 1029(a) of the Dodd-Frank Wall Street Reform and Consumer Protection Act, 12 U.S.C. 5519(a), shall be required to comply with the requirements of Section 704B of the Equal Credit Opportunity Act, 15 U.S.C. 1691c-2, until the effective date of final rules issued by the Board to implement Section 704B of the Equal Credit Opportunity Act, 15 U.S.C. 1691c-2. Section 202.17(a). Moreover, the proposed rule provides that the rule shall not be construed to affect the effective date of Section 704B ECOA for any person other than a motor vehicle dealer covered by Section 1029(a) of the Dodd-Frank Act.

IV. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3506; 5 CFR part 1320 Appendix A.1), the Board reviewed the proposed rule under the authority delegated to the Board by the Office of Management and Budget. The rule contains no collections of information under the PRA. *See* 44 U.S.C. 3502(3). Accordingly, there is no paperwork burden associated with the rule.

V. Regulatory Flexibility Analysis

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612, requires an agency to perform an initial and final regulatory flexibility analysis on the impact a rule is expected to have on small entities. The Small Business Administration (SBA) establishes size

standards that define which entities are small businesses for purposes of the RFA.⁴ The size standard to be considered a small business is: \$175 million or less in assets for banks and other depository institutions; and \$7 million or less in annual revenues for the majority of non-bank entities that are likely to be subject to the final rules.

Under Section 605(b) of the RFA, 5 U.S.C. 605(b), the initial regulatory flexibility analysis otherwise required under Section 603 of the RFA is not required if an agency certifies, along with a statement providing the factual basis for such certification, that the rule will not have a significant economic impact on a substantial number of small entities. Based on its initial analysis and for the reasons stated below, the Board believes that this proposed rule would not have a significant economic impact on a substantial number of small entities.

A. Statement of Reasons, Objectives, and Legal Basis for the Proposed Rule

Section 704B of the Equal Credit Opportunity Act (ECOA), as added by Section 1071 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act or Act), requires that financial institutions collect and report information concerning credit applications made by women- or minority-owned businesses and by small businesses. ECOA Section 704B becomes effective on the date that rulemaking authority for ECOA is transferred to the Consumer Financial Protection Bureau (CFPB), which is July 21, 2011. Although the CFPB will have the authority to issue rules to implement ECOA Section 704B for most entities, the Board retains authority to issue rules for certain motor vehicle dealers. This proposed rule excepts motor vehicle dealers that are

⁴ U.S. Small Business Administration, Table of Small Business Size Standards Matched to North American Industry Classification System Codes, available at http://www.sba.gov/idc/groups/public/documents/sba_homepage/serv_sstd_tablepdf.pdf.

subject to the Board's jurisdiction from the requirements of ECOA Section 704B temporarily, until the effective date of final rules that will be issued by the Board to implement that provision. The **SUPPLEMENTARY INFORMATION** above contains information on the reasons, objectives and legal basis for the proposed rule.

B. Small Entities Affected by the Proposed Rule

The proposed rule applies to motor vehicle dealers covered by Section 1029(a) of the Dodd-Frank Act.⁵ The total number of small entities covered by the final rules is unknown, because the Board does not have data on the number of small entities that are motor vehicle dealers covered by Section 1029(a). Furthermore, it is not clear how many motor vehicle dealers covered by Section 1029(a) receive credit applications from women- or minority-owned business or small businesses. Nevertheless, there are likely to be no small entities affected by the final rule because the rule merely preserves the status quo by granting a temporary exemption from the requirement to comply with the statute when it takes effect on July 21, 2011.

C. Recordkeeping, Reporting, and Compliance Requirements

The proposed rule would not impose any new recordkeeping, reporting, or compliance requirements. Instead, the proposed rule temporarily would delay such

⁵ Section 1029(a) of the Dodd-Frank Act states: "Except as permitted in subsection (b), the Bureau may not exercise any rulemaking . . . authority . . . over a motor vehicle dealer that is predominantly engaged in the sale and servicing of motor vehicles, the leasing and servicing of motor vehicles, or both." 12 U.S.C. 5519(a). Section 1029(b) of the Dodd-Frank Act states: "Subsection (a) shall not apply to any person, to the extent such person (1) provides consumers with any services related to residential or commercial mortgages or self-financing transaction involving real property; (2) operates a line of business (A) that involves the extension of retail credit or retail leases involving motor vehicles; and (B) in which (i) the extension of retail credit or retail leases are provided directly to consumers and (ii) the contract governing such extension of retail credit or retail leases is not routinely assigned to an unaffiliated third party finance or leasing source; or (3) offers or provides a consumer financial product or service not involving or related to the sale, financing, leasing, rental, repair, refurbishment, maintenance, or other servicing of motor vehicles, motor vehicle parts, or any related or ancillary product or service." 12 U.S.C. 5519(b).

requirements until the Board issues final implementing regulations and the regulations become effective.

D. Identification of Duplicative, Overlapping, or Conflicting Federal Regulations

The Board has not identified any federal statutes or regulations that would duplicate, overlap, or conflict with the proposed rule.

E. Significant Alternatives to the Proposed Revisions

The Board is not aware of any significant alternatives that would further minimize any significant economic impact of the proposed rule on small entities, but solicits comment on this approach.

List of Subjects in 12 CFR Part 202

Aged, Banks, Banking, Civil Rights, Credit, Discrimination, Federal Reserve System, Marital Status Discrimination, Penalties, Religious Discrimination, Reporting and Recordkeeping Requirements, Sex Discrimination.

Authority and Issuance

For the reasons set forth in the preamble, the Board proposes to amend Regulation B, 12 CFR part 202, as follows:

PART 202—EQUAL CREDIT OPPORTUNITY (REGULATION B)

1. The authority citation for part 202 is revised to read as follows:

Authority: 15 U.S.C. 1691-1691f; Pub. L. 111–203, 124 Stat. 1376.

2. Add § 202.17 to read as follows:

§ 202.17 Data collection for credit applications by women-owned, minority-owned, or small businesses.

(a) *Effective date for motor vehicle dealers.* No motor vehicle dealer covered by section 1029(a) of the Dodd-Frank Wall Street Reform and Consumer Protection Act, 12

U.S.C. 5519(a), shall be required to comply with the requirements of section 704B of the Equal Credit Opportunity Act, 15 U.S.C. 1691c-2, until the effective date of final rules issued by the Board to implement section 704B of the Act, 15 U.S.C. 1691c-2. This paragraph shall not be construed to affect the effective date of section 704B of the Act for any person other than a motor vehicle dealer covered by section 1029(a) of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

By order of the Board of Governors of the Federal Reserve System, June 17, 2011.

Jennifer J. Johnson (signed)

Jennifer J. Johnson,
Secretary of the Board.